Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1600

CLARA WELLS, PETITIONER

v.

PIONEER WEAR, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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v.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Clara Wells, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. A infra, pp. 1a-5a), is not to the best of petitioner's knowledge reported by the Federal Reporter system.

JURISDICTION

The judgment of the court of appeals was entered on January 18, 1979 (App. A, infra, p. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

1. Whether the filing of a charge of discrimination with the Equal Employment Opportunity Commission pursuant to 42 U.S.C. §2000(e) et. seq. should toll the statute of limitations contained in 29 U.S.C. §255 as it applies to claims made under the Equal Pay Act, 29 U.S.C. §206(d) and 29 U.S.C. §216(b)?

STATUTES INVOLVED

Equal Pay Act of 1963, 29 U.S.C. §206(d)(1), Pub. L. 88-38, §3, 77 Stat. 56 and §216(b) of the Fair Labor Standards Act, 29 U.S.C. 216(b), Pub. L. 75-718, 52 Stat. 1069, and §255 of the Portal-toPortal Pay Act, 29 U.S.C. 255, Pub. L. 80-49, 61 Stat. 87; and Title VII of the Civil Rights Act, 42 U.S.C. 2000(e) et. seq. as amended, (Supp. II. 1972), Pub. L. 88-352, Title VII, §706, 78 Stat. 259, Pub. L. 92-261, 86 Stat. 104.

STATEMENT

Petitioner, Clara Wells was employed by Defendant, Pioneer Wear, Inc., from November, 1968 until August, 1973. On July 27, 1973 Petitioner filed an administrative complaint charging discrimination based on sex with the Equal Employment Opportunity Commission, Albuquerque Office. That complaint was deferred to the appropriate agency of the State of New Mexico for consideration on August 6, 1973 and was referred back to the Equal Employment Opportunity Commission on August 18, 1973.

On June 15, 1976 Petitioner received a "Notice of Right to Sue" from the Albuquerque District Office of the Equal Employment Opportunity Commission. The complaint in the

United States District Court for the District of New Mexico was filed on September 13, 1976.

Defendant filed a motion to dismiss Count II of the Complaint which was based on the Equal Pay Act of 1963, 29 U.S.C. §206(d), 216(b) arguing that the statute of limitations governing claims under the Equal Pay Act, 29 U.S.C. §255 had run on August 29, 1975 or at least on August 29, 1976 either two or three years after Petitioner's resignation from Pioneer Wear. By order dated November 30, 1976 the District Court granted Pioneer Wear's motion to dismiss. (App B) The court of appeals affirmed the district court's dismissal of the Equal Pay Act claims in its decision rendered on January 18, 1979. (App A 1a-5a) Both the district court and the court of appeals relied on this Court's reasoning in Johnson v. Railway Express Agency, 421 U.S. 454 (1975) in dismissing the Equal Pay Act claims.

REASONS FOR GRANTING REVIEW

The precise question raised by this petition has been answered only by the Court of Appeals for the Tenth Circuit. There is no conflict among the courts of appeals on the statutory question presented here. The question has significant administrative importance in view of the frequently lengthy delays that accompany the investigation and conciliation process involved when a complaint of discrimination is filed with the Equal Employment Opportunity Commission.

If no tolling of the Equal Pay Act statute of limitations is present, the individual complainant may waive all rights under the Fair Labor Standards Act without realizing that the loss is occurring. Particularly in the area of promotions, the factual considerations applicable to a claim under the Equal Pay Act and Title VII of the 1964 Civil Rights Act are almost identical. Yet the coordinate purpose of the two Acts may easily be frustrated by their separate administration by two different federal agencies.

To the best of Petitioner's knowledge no information concerning an Equal Pay Act claim was ever disseminated by the Equal Employment Opportunity Commission.

The investigation and conciliation process in the instant case took two years and nine months to complete. Unless a willfull violation of the Equal Pay Act is alleged, no possibility of litigating the claim was afforded Petitioner by the two year statute of limitations applicable. Timely filing of a private suit after the "Notice of Right to Sue" was issued left Petitioner and many others similarly situated with an extremely short period of time in which to enforce the Equal Pay Act claim.

Tolling the statute of limitations would not work any hardship on potential defendants as the information, witnesses, testimony and exhibits upon which a defense is based is exactly the information which would be gathered to respond to an Equal Employment Opportunity Commission investigation. Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342 (1944). The reasoning of Order of Railroad Telegraphers has been applied by this Court in American Pipe and Construction Co. v. Utah, 414 U.S. 538 (1974) and Burnett v. New York Central Railroad Co., 380 U.S. 424 (1965).

Given the close coordinate purposes of the Equal Pay Act and Title VII of the 1964 Civil Rights Act, the legisltive purpose of both Acts is best served by tolling the statute of limitations applicable to Equal Pay Act claims while the Equal Employment Opportunity Commission administrative procedures are in progress.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 77-2074

CLARA WELLS, PETITIONER

v.

PIONEER WEAR, INC.

**Appeal from the United States District Court
for the District of New Mexico**

Submitted: August 4, 1978
Filed: January 18, 1979

Before SETH, Chief Judge, MCWILLIAMS and
BARRETT, Circuit Judges

SETH, Chief Judge

Plaintiff has taken this appeal from a judgment denying her relief from alleged sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e) et seq. She contends that the trial judge erroneously dismissed her claims under the Equal Pay Act of 1963, 29 U.S.C. §206(d), as barred by the statute of limitations, 29 U.S.C. §255, and because the evidence could not support judgment for the plaintiff.

29 U.S.C. §255 provides that any action for unpaid wages under the Fair Labor Standards Act must be commenced "within two years after the cause of the action accrued." Upon motion by the defendant the trial judge dismissed the Equal Pay Act claims because plaintiff quit her job on August 29, 1973, and filed her complaint more than three years later on September 13, 1976. Plaintiff contends that the limitation period should be tolled because she timely filed with the Equal Employment Opportunity Commission and received her right to sue letter shortly before filing this complaint in federal court.

Plaintiff argues that tolling the statute of limitations under these circumstances would promote the legislative purpose of Title VII and the Equal Pay Act. However, we do not believe that Congress so intended, and thus must hold that filing under Title VII does not toll the statute of limitations for the Equal Pay Act.

Although the Supreme Court has not decided the precise question before us, it nevertheless has considered the relationship between Title VII and other employment discrimination statutes. A Title VII cause of action is separate and supplementary to an action brought, for example, under the Labor Management Relations Act, 1947, 29 U.S.C. §141 et seq., or the Civil Rights Act of 1866, 42 U.S.C. §1981, for "the legislative history of Title VII manifests a congressional intent to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes." Alexander v. Gardner-Denver Co., 415 U.S. 36. Extending this reasoning to a limitations problem similar to the case at bar, the

Supreme Court in Johnson v. Railway Express Agency, 421 U.S. 454, held that timely filing of an action based on Title VII does not toll the running of the limitation period applicable to an action based on the same facts and brought under 42 U.S.C. §1981. Title VII and the Equal Pay Act are not coextensive for the same reasons Title VII and 42 U.S.C. §1981 are not coextensive. Title VII provides assistance in investigation, conciliation, and counsel. The adminstrative machinery established by Title VII is not incorporated or tasked with processing Equal Pay Act claims.

Furthermore, the circumstances of the instant case provide even less latitude than those in Johnson. 42 U.S.C. §1981 is not governed by a federal statute of limitations. Thus, limitation periods derive from state law unless an overriding federal policy exists. We are dealing here, however, with an explicit federal statute of limitations. It is the stated intent of Congress that all actions be brought within the time period. Accordingly, the trial judge correctly dismissed plaintiff's Equal Pay Act claims. American Pipe & Construction Co. v. Utah, 414 U.S. 538, does not persuade us otherwise.

Plaintiff also argues that the evidence does not support the trial court's finding for defendant. A review of the record convinces us that the findings were not clearly erroneous and that the trial court correctly applied the standards set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, and Furnco Construction Corp. v. Waters, ____U.S. ____, 46 U.S.L.W. 4966.

Clara Wells established a prima facie case of sex discrimination. She began clerical work with an hourly wage for Pioneer Wear in early 1965, and subsequently became assistant to the production manager and purchasing agent, Gary Bunger. He was an executive of the company and received a salary in accordance with company policy. Wells applied for this position when Bunger left in 1971. Personnel records and supervisor

recommendations indicate her work was very satisfactory. Defendant, however, divided Bunger's responsibilities among existing personnel and although Wells became the purchasing agent, she remained on an hourly wage.

Pioneer Wear in its proof advanced various business reasons for not promoting Clara Wells to the same position and salary as Bunger. Pioneer Wear is a closely held family corporation engaged in producing western style clothes. A small managerial staff operates under its president who exercises considerable control over all phases of the business. Formal job titles exist, but duties are flexible. Bunger, who had previous work experience in this field, was hired to be the president's assistant. He directed among his various duties the purchasing and production departments. On his departure, for economic reasons his duties were divided among existing personnel, including the vice president who Bunger had replaced, but who subsequently returned before Bunger's departure. Wells took on only his purchasing functions but was not given the independent authority Bunger had exercised. It appears that her performance at executive meetings was not entirely satisfactory and that time sheets indicated her work attendance was poor. Her additional responsibilities were recognized, however, by a 25 per cent wage increase during her first two months as purchasing agent. When Clara Wells left Pioneer Wear she was the second highest paid hourly wage employee. Pioneer Wear also presented evidence that several female designers were on salary during Wells' employment.

As Clara Wells failed to show that these reasons were a pretext for sex discrimination, Subia v. Colorado & S. R. Co., 565 F.2d 659 (10th Cir.), the trial court concluded that Pioneer Wear carried its burden of showing a rational basis for the decision not to promote Wells to the same duties and responsibilities Gary Bunger performed during his employment. We believe the trial court properly reviewed the evidence and

correctly applied the standards set forth in McDonnell Douglas and Furnco.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

No. 76-510-M Civil

CLARA WELLS, PLAINTIFF

v.

PIONEER WEAR, INC., DEFENDANT

Order

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CLARA WELLS,

Plaintiff,

vs. No. 76-510-M Civil

PIONEER WEAR, INCORPORATED,
a New Mexico corporation,

Defendant.

ORDER

This case came on for consideration of defendant's motion for partial dismissal. As grounds therefore the defendant

asserts that the plaintiff, Clara Wells, is barred by the statute of limitations from pursuing any cause of action under the Fair Labor Standards Act, 29 U.S.C.A. §201 et. seq. as amended by the Equal Pay Act, 29 U.S.C.A. §206(d). Further, the defendant states that there is no basis in the National Labor Relations Act, 29 U.S.C.A. §151 et seq. for plaintiff's claims of discrimination.

In her response to the motion, plaintiff urges that the limitations period set forth at 29 U.S.C.A. §255 be deemed to have been tolled by the filing and administrative pursuit of her claim with the Equal Employment Opportunity Commission. I find that the Supreme Court's decision in Johnson v. Railway Express Agency, 421 U.S. 454 (1975), is controlling in this case and, therefore, defendant's motion is well taken as to the claims under 29 U.S.C.A. §206(d).

The National Labor Relations Act, 29 U.S.C.A. §151 et seq. pertains to labor practices of management and labor organizations, it provides no basis for the claims asserted in this case. Therefore, insofar as the instant complaint relies on that statute, those claims fail to state a cause of action upon which relief may be granted.

It appearing that the defendant's motion for partial dismissal is well taken, Now, Therefore,

IT IS ORDERED that the claims of Clara Wells pursuant to the Fair Labor Standards Act, 29 U.S.C.A. §205 et seq., as amended, and those under the National Labor Relations Act, 29 U.S.C.A. §151 et seq. are hereby dismissed.

/s/ Edwin L. Mechem
United States District Judge

Dated: November 30, 1976.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

No. 76-510-M Civil

CLARA WELLS, PLAINTIFF

v.

PIONEER WEAR, INC., DEFENDANT

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CLARA WELLS,
Plaintiff,

v. No. 76-510-M Civil

PIONEER WEAR, INCORPORATED,
a New Mexico corporation,
Defendant.

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

The following shall constitute the Findings of Fact and Conclusions of Law.

Findings of Fact

1. Plaintiff has met the jurisdictional prerequisites necessary to the filing of this action pursuant to 42 U.S.C. §2000(e), et seq. (Supp. II, 1972).

2. This Court has subject matter and personal jurisdiction of the parties hereto.

3. Plaintiff was employed by defendant from March 5, 1965 to August 10, 1966 and from November 1, 1968 to August 29, 1973. The acts of defendant of which plaintiff complains took place during the period of time from November, 1971 to August, 1973.

4. Plaintiff was an assistant to Gary Bunger from November, 1968 through December, 1971.

5. Pioneer Wear is a manufacturer of western style garments in Albuquerque, New Mexico. It distributes its garments in interstate commerce. Although its work force fluctuates widely, at all times relevant to this suit it has employed several hundred people.

6. Gary Bunger was hired by Pioneer Wear from Karman, a manufacturer of western clothes in Denver, Colorado. Mr. Bunger's background included two years of engineering in college, several accounting and computer programming courses, 3½ years experience in the garment retailing business, and 2½ years as production coordinator at Karman. In that position, he had taken responsibility for purchasing and distributing raw materials and coordinating production among Karman's several manufacturing plants. In addition, he had been in charge of starting up a belt manufacturing operation and a new division called "Sand & Sage." This involved hiring all the personnel, establishing a new plant, and beginning production.

7. At the time he was hired, Mr. Bunger was to be second in command to John Sullivan, Pioneer Wear's president. Pioneer Wear was a closely held family corporation which had a very small and flexible management staff. The company did not have precisely defined titles or job descriptions for its managers. Functions were distributed among executives as the need arose, depending on the personnel available.

8. Mr. Bunger was hired to replace Joe Wilson, but Mr. Wilson returned to the company after a brief absence and was reassigned a position essentially equal to that of Gary Bunger. Mr. Bunger and Mr. Wilson remained as employees of Pioneer Wear in executive positions but there was some animosity and friction between the two.

9. Mr. Bunger's initial duties as "Production Manager" at Pioneer Wear included reorganizing the cloth and leather cutting rooms, including hiring and firing cutting room personnel. The cutting rooms were moved or expanded several times under Mr. Bunger and he redesigned the layout of cutting machinery when these changes were made. Mr. Bunger also was in charge of selecting and buying new production machinery as the need arose. At his instigation, Pioneer Wear obtained the equipment and expertise for making its own leather cutting dies. Since each size of each pattern required a separate set of dies, Pioneer Wear was able to save considerable expense by making them within the company, rather than purchasing them from outside suppliers as had been done before.

10. Mr. Bunger instituted a system of quality control whereby the cutters inspected the goods they were working on, according to written standards devised by Mr. Bunger.

11. Mr. Bunger approved all "tracers", which are diagrams showing how the pieces in a pattern should be cut from a roll of fabric in order to minimize waste. He also supervised other cutting methods, such as the number of layers to be stacked and the way they were fed to the cutting

apparatus.

12. Whenever a problem arose in the cutting room which could not be handled by the supervisors, Mr. Bunger was called in to straighten it out. In his earlier years, Mr. Bunger spent roughly seven to eight hours per day in the cutting room, decreasing to around three hours per day in 1971.

13. When Mr. Bunger left, most of his cutting room managerial responsibilities were taken on by Tom Jaramillo or Joe Wilson, the other two executives. Mrs. Wells was never involved in hiring and firing cutting room personnel, selecting machinery, designing layouts, making dies, setting quality control standards, approving tracers and cutting procedures, and straightening out cutting problems.

14. In December of 1971, plaintiff was made the purchasing agent for Pioneer Wear succeeding to many of the duties occupied by her predecessor, Gary Bunger.

15. As purchasing agent she was supervised by Joe Wilson.

16. Some functions of the job which Gary Bunger performed were given to other executive and non-executive employees of Pioneer Wear.

17. Plaintiff claims she should have been promoted to the position held by Gary Bunger and that the defendant's decision not to promote but to reassign Bunger's duties to other employees was based on her sex.

18. There is little question that Mr. Bunger had "paper" qualifications superior to those of Mrs. Wells, but Mrs. Wells has shown that she had sufficient qualifications to apply for the position and there appears to be no serious impediment to her learning those functions still being actively performed by Mr. Bunger.

19. Defendant's theory of the case is that Mrs. Wells took over only a part of Mr. Bunger's responsibility and, therefore, was not entitled to the same job title and salary of Mr. Bunger.

20. Plaintiff's rebuttal evidence was designed to show that this evidence is a pretext because Bunger was a poor employee while she was more competent than he in the areas she actually took over. It is not disputed that she performed satisfactorily in these areas.

21. Although there is a genuine factual dispute whether Mr. Bunger actually performed his job assignments prior to his leaving Pioneer Wear, he was given a considerable amount of executive authority. The defense is not a pretext for unlawful discrimination.

22. Mr. Sullivan was very conservative in delegating authority. Significant decisions required his approval and he normally approved decisions of subordinates even when his approval was not required.

23. Although Mr. Sullivan believed that Mrs. Wells was not qualified to do more than a purchasing agent, his approach to the problem was to reorganize Pioneer Wear and distribute functions among existing personnel so that the company would have one less executive and, thereby save money. The decision was a business decision, the necessity or desirability of which is questionable but I believe it to have been based on economic considerations rather than on a policy of discrimination against women on the basis of sex.

Conclusions of Law

1. The Court has jurisdiction over this action.

2. Defendant's decision not to promote Mrs. Wells to Mr. Bunger's position or to pay her the same compensation as Mr. Bunger was not in violation of Title VII of the Civil Rights Act, 42 U.S.C. §2000(e), et seq.

3. Judgment should be entered for the defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CLARA WELLS,

Plaintiff,

v. No. 76-510-M Civil

PIONEER WEAR, INCORPORATED,
a New Mexico corporation,

Defendant.

JUDGMENT

This action came on for trial before the Court, Honorable E. L. Mechem, District Judge, presiding and the issues having been duly tried and a decision having been duly rendered,

IT IS ORDERED and ADJUDGED that the plaintiff take nothing, that the action be dismissed on the merits and that the defendant, Pioneer Wear, Incorporated, recover of the plaintiff, Clara Wells, its costs of action.

Dated at Albuquerque, New Mexico, this 17th day of October, 1977.

JESSE CASAUS, Clerk

/s/ Edwin L. Mechem
United States District Judge
/s/ Charlotte C. Smith
Deputy Clerk

Dated: October 19, 1977.

APPENDIX D

Section 206(d)(1-4), the Equal Pay Act of 1863, U.S.C. 206(d), Pub. L. 88-38, §3.77 Stat. 56, provides:

Prohibition of sex discrimination

(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employeed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term ''labor organization'' means any organization of any kind, or any

agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay. hours of employment, or conditions of work.

Section 216(b) of the Fair Labor Standards Act, 29 U.S.C. 216(b), Pub. L. 75-718, 52 Stat. 1069 provides:

(b) Any employer who violates the provisions of section 206 or section 207 of this title shall be lable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under scetion 217 of this title in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection.

Section 255 of the Portal-to-Portal Pay Act, 29 U.S.C. 255, Pub. L. 80-49, 61 Stat. 87 provides:

Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

(a) if the cause of action accrues on or after May 14, 1947—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

(b) if the cause of action accrued prior to May 14, 1947—may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued, or (2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c) of this section, every such action shall be forver barred unless commenced within the shorter of such two periods;

(c) if the cause of action accrued prior to May 14, 1947, the action shall not be barred by paragraph (b) of this section if it is commenced within one hundred and twenty days after May 14, 1947 unless at the time commenced it is barred by an applicable State statute of limitations;

(d) with respect to any cause of action brought under section 216(b) of this title against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the

effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.

Section 2000(e)-5, a portion of Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000(e)-5(a & b), as amended, (Supp II 1972), Pub. L. 88-352, Title VII, §706, 78 Stat. 259, Pub. L. 92-261, 86 Stat. 104 provides:

(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-manage-

ment committee (hereinafter referred to as the ''respondent'') within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where aplicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.